



Midwest Region Division of Migratory Birds

April 2012

Authorized Activities Involving Unintentional Eagle Disturbance

Bald and Golden Eagles

Forty years ago, our national symbol was in danger of extinction throughout most of its range. Habitat destruction and degradation, illegal shooting, and the contamination of its food source, largely as a consequence of DDT, decimated the bald eagle population. Habitat protection afforded by the Endangered Species Act, the federal government's banning of DDT, and conservation actions taken by the American public have helped bald eagles make a remarkable recovery.

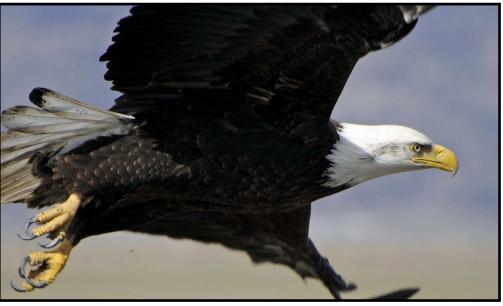
To ensure eagle populations remain at sustainable levels, eagles continue to be protected under the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act and Lacey Act.

The U.S. Fish and Wildlife Service (Service) developed National Bald Eagle Management Guidelines to help people minimize impacts to bald eagles, particularly where they may constitute "disturbance," which is prohibited by federal law. A variety of human activities can potentially interfere with bald eagles, affecting their ability to forage, nest, roost, breed or raise young.

However, there may be activities such as construction of a road, development of renewable energy facilities and other lawful activities that may disturb or result in the injury or mortality of eagles.

A permit from the U.S. Fish and Wildlife Service Division of Migratory Birds Permits Office (under 50 CFR 22.26 or 22.27) is recommended if you are unable to minimize or prevent disturbance, injury or potential mortality of bald or golden eagles as a result of an otherwise lawful activity.

The Service authorizes the issuance of these permits to help protect both the eagle population through mitigation and



Bald and golden eagles are protected under three federal laws, however, permits may be issued when projects could result in the unintended disturbance, injury or mortality of eagles. Service photo.

monitoring and individuals' or companies from prosecution due to possible violation of federal law from eagle disturbance, injury or take.

Federal regulations for eagle permits

Federal regulations set forth in 50 CFR § 22.26 provide for issuance of permits to take bald eagles and golden eagles where the taking is associated with but not the purpose of the activity and cannot practicably be avoided. Permits authorize take of bald and golden eagles. However, currently no permits are available for golden eagles east of the 100th meridian.

Most take authorized under this section will be in the form of disturbance; however, permits may authorize nonpurposeful take that may result in injury or mortality.

Eagle permits authorize take only in circumstances where the take cannot be practicably avoided in the course of an otherwise lawful activity.

Take and disturbance

Under the Bald and Golden Eagle Protection Act, "take" is defined as pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest or disturb. Most take authorized under the permit program is in the form of disturbance.

"Disturb" is defined as to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause injury to an eagle, decrease in productivity, or nest abandonment.

Nest removal

The regulation at 50 CFR § 22.27 also establishes permits for removing eagle nests where:

- (1) necessary to alleviate a safety emergency to people or eagles;
- (2) necessary to ensure public health and safety;
- (3) the nest prevents the use of a humanengineered structure; or

(4) the activity or mitigation for the activity will provide a net benefit to eagles.

Only inactive nests may be removed, except in the case of safety emergencies. Inactive nests are defined by the continuous absence of any adult, egg, or dependent young at the nest for at least 10 consecutive days leading up to the time of take.

All of these permits must be compatible with the Bald and Golden Eagle Protection Act goal of maintaining a stable or increasing population.

The Service can also issue programmatic take permits which authorize take that is recurring, but not caused solely by indirect effects, and occurs over the long term and/or in a location or locations that cannot be specifically identified.

Habitat Conservation Plans
Unintentional take of an eagle may also be authorized via completion of a Habitat Conservation Plan under Section 10 of the Endangered Species Act of 1973, which can apply to incidental take of both listed and nonlisted species. For more information about Habitat Conservation Plans, visit: http://www.fws.gov/endangered/what-we-do/hcp-overview.html

Mitigation and monitoring
Eagle take permits may require
monitoring (pre, during, and post
construction), avoidance and minimization
to the fullest extent practicable, as well
as mitigation. The Service does not
issue permits for the intentional killing
or injury of eagles. All permittees must
avoid and minimize take to the maximum
degree practicable.

Mitigation can be in the form of avoidance and minimization, and is generally proportionate with the level of disturbance and take. Compensatory mitigation measures may be a permit condition for multiple take authorizations, disturbance associated with the loss of a breeding territory or roost site, or as necessary to off-set impacts to the local area population.

Permittees may be required to provide basic post-activity monitoring for up

to three years following the activity. Basic monitoring includes determining whether eagles returned to a disturbed site the following seasons, and if chicks successfully fledged.

Permits vs. licenses

Eagle permits are not akin to waterfowl hunting licenses. With a waterfowl hunting license, the permit holder is granted the right to purposefully seek out and kill specific kinds of waterfowl - this is an intentional take. For an eagle take permit, the take of the eagle (disturbance, injury, or mortality) may be a non-intentional side effect of an otherwise lawful activity (operation of a wind facility).

If a federal permit is issued, but the project proponent has other state, local, or tribal permits it must obtain, the federal eagle permit is not valid until the applicant is in compliance with all permitting authorities.

The Service can not require a federal eagle take permit, but will recommend a permit when take seems likely. This permit will help protect both the eagle population through mitigation and monitoring and the project proponent from prosecution of an illegal eagle take.

Federal Laws Protecting Eagles

Bald and Golden Eagle Protection Act Passed in 1940, this law provides for the protection of bald eagles and golden eagles by prohibiting the take, possession, sale, offer to sell, purchase or barter, transport, export or import, of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit.

Migratory Bird Treaty Act is a federal law that carries out the United States' commitment to four international conventions with Canada, Japan, Mexico and Russia. Those conventions protect birds that migrate across international borders. The take of all migratory birds, including bald and golden eagles, is governed by MBTA regulations. This act prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests except as authorized under a valid permit.

Lacey Act

Passed in 1900, the Lacey Act protects bald eagles by making it a federal offense to take, possess, transport, sell, import, or export their nests, eggs and parts that are taken in violation of any state, tribal or U.S. law.

Information about eagles and the legislation that protects them can be found at http://www.fws.gov/midwest/eagle/.

An interactive Web page specific to eagle permits can be at http://www.fws.gov/midwest/MidwestBird/eaglepermits/index.html.

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